

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,

Plaintiff,

v.

TYSON FOODS, INC., et al.,

Defendants.

Case No. 05-cv-329-GKF(PJC)

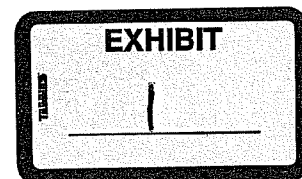
**DECLARATION OF C. ROBERT TAYLOR**

I, C. Robert Taylor, Ph.D., hereby declare as follows:

1. I am the Alfa Eminent Scholar and Professor of Agricultural Economics at Auburn University, Auburn, Alabama. This position is equivalent to the rank of Distinguished University Professor. I hold a B.S. degree in agricultural economics from Oklahoma State University, a M.S. degree in economics and agricultural economics from Kansas State University, and a Ph.D. degree in agricultural economics from the University of Missouri-Columbia. I have held tenured positions at the University of Illinois, Montana State University and Texas A&M University in addition to Auburn University. I served on the Executive Board and Foundation Board of the American Agricultural Economics Association, which is the national association for agricultural economists, from 1998-2001. I have served on the editorial board of four scholarly journals, including the American Journal of Agricultural Economics, which is the premier journal in my profession. I am co-author of one graduate textbook, editor of one book, co-editor of three books, and I have authored about one hundred peer reviewed scholarly articles, plus an additional hundred reports, book chapters and other publications.

2. I have conducted economic analyses for the United States Department of Agriculture, the United States Environmental Protection Agency, the United States Department of Energy, the National Science Foundation, the Natural Resources Economics Service, the United States Army Corps of Engineers, the United States Forest Service, the American Farm Bureau Research Foundation, Ciba-Geigy Company, the United States Congressional Office of Technology Assessment, the National Crop Insurance Service, various state agencies, and state agricultural organizations. I have also given "briefings" on price, income and consumer effects of pesticide policy to the United States Senate and House Agriculture Committees, to the United States Environmental Protection Agency, to a national agricultural industry group, and to the Chief Economist of the United States Department of Agriculture.

3. I testified to the United States Senate Committee on Agriculture, Nutrition and Forestry in a session on Economic Concentration in Agribusiness in 1999, and I provided testimony for the United States House Agricultural Committee Hearings on Livestock Prices. I also testified to the United States Senate Committee on Agriculture, Nutrition and Forestry in 2002 in a session



on banning packer ownership of cattle and hogs, and on USDA/GIPSA's enforcement of the Packers and Stockyards Act. In April of 2007, I testified to the United States House of Representatives Committee on Agriculture, Subcommittee on Livestock, Dairy and Poultry on key issues affecting the livestock and poultry industries.

4. In 2002, I gave an invited talk to the Oklahoma Senate titled "The Global Food System: Legal Issues from an Economist's Perspective." I also gave a talk in 2002 on "Contract Agriculture: Legal Issues from an Economist's Perspective" at a CLE conference sponsored by the Oklahoma Attorney General's Office and the Oklahoma Bar Association.

5. Early in my professional career, I conducted substantive research on plant nutrients as water pollutants. More recently, I have done extensive work regarding the economics of the livestock and poultry industries, including analyses of market power imbalances.

6. I have been retained by the State of Oklahoma to evaluate the relationship between poultry growers and defendant poultry companies and to assess the economics of the poultry industry, including removal of poultry waste from the Illinois River Watershed (IRW).

7. On May 15, 2008, I submitted my expert report in this case. The following paragraphs are portions of that report. I hold and intend to testify at trial about the following opinions (along with the other opinions set forth in my report).

8. The domestic poultry meat industry is fully integrated vertically<sup>1</sup>, meaning that ownership and control of essentially all aspects of production in the vertical chain from baby chick to processed broilers and wholesale poultry products is held by poultry companies, commonly known as "integrators."<sup>2</sup> The poultry industry, which includes broiler, turkey and egg production, is the most vertically integrated of all major agricultural industries.<sup>3</sup> Each of the defendant companies is vertically integrated, and each has the business practices discussed below.

9. Integrators generally own or control the breeding flock, hatcheries, chicks, assignment of baby chicks to growers, feedmills, feed ingredients, transportation of feed, and processing (slaughter) plants. Integrators make all decisions regarding placement of baby chicks, the number of chicks placed with each grower, and when birds ready for processing will be picked up from

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<sup>1</sup> A report by the Economic Research Service (ERS) of USDA defines vertical integration as a "method of vertical coordination representing the greatest degree of control that a firm can gain over another stage of production. Coordination of two or more stages occurs under common ownership via management directive." Steven W. Martinez, Vertical Coordination in the Pork and Broiler Industries: Implications for Pork and Chicken Products, USDA/ERS Agricultural Economic Report No. 777, April 1999, p. iv. Clement Ward, in an Oklahoma State University Extension report defines vertical integration as "where one firm owns and controls a commodity and the products processed from it through the entire producer-to-consumer supply chain. In this case, the integrating firm decides what, how, and how much to produce and process to meet consumer demands." Beef, Pork and Poultry Industry Coordination, Bulletin F-552, Dec. 2004.

<sup>2</sup> The industry is self-described by the National Chicken Council as "vertically integrated." <http://www.nationalchickencouncil.com/aboutIndustry/detail.cfm?id=15>

<sup>3</sup> Development and extent of contracting with various crops and types of livestock is given in James M. MacDonald and Penni Korb, Agricultural Contracting Update: Contracts in 2003, USDA/ERS Economic Information Bulletin No. 9, Jan. 2006.

the grower. Integrators also dictate specifications for growout house and equipment. Location of growout facilities and thus location of poultry waste generation is also fully controlled by the integrators.

10. Under the dominant business arrangement, the integrator owns the chicks and feed, while farmers, commonly called contract growers, carry out actual production, or growout, from chicks to birds ready for processing.<sup>4</sup> Growout of each flock is under the direct supervision and control of the integrator. Integrator representatives (service technicians) typically visit each growout house at least weekly to check on and supervise the grower's care of flocks and check on litter, waste and dead birds.<sup>5</sup> Integrator representatives also give instructions or directives to growers regarding maintenance and upgrades of facilities. Many of these obligations are found in standardized contracts integrators provide to growers. Molnar, et al, state, "*This network of company specialists [i.e. service technicians] comprises the command-and-control structure that specifies the grower's production process.*"<sup>6</sup>

11. Integrators require growers to provide expensive specialized production facilities (houses, associated equipment, utilities), grower services (labor and management), and waste management and disposal.

12. Beginning in the 1950s contracting of broiler production evolved from simple credit arrangements with feed companies, to profit-sharing arrangements, to flat fee contracts, and finally to a basic feed-conversion contract.<sup>7</sup> Almost all broiler and turkey contracts now establish a base fee the grower will receive, with a plus or minus adjustment based on relative performance compared to other growers for the same integrator in the same complex. Economists often refer to this arrangement as a pay "tournament." Some poultry contracts, such as for breeders, pullets, and layers have a performance based (bonus) system, but do not rank growers against each other as in a tournament.

13. Open, transparent cash markets for broilers or turkeys ready for processing disappeared decades ago.<sup>8</sup> Because there is no open market for poultry ready for processing, there is no economically viable alternative for commercial, non-specialty growers who wish to be independent from integrators. Integrators will not purchase birds from truly independent growers. Therefore, a person cannot independently raise commercial poultry and have a ready cash market for them.

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<sup>4</sup> See, for example, Tomislav Vukina, "Vertical Integration and Contracting in the U.S. Poultry Sector," Journal of Food Distribution Research, July 2001:29-38.

<sup>5</sup> Weekly visits by service technicians are confirmed by deposition testimony. See, for example, deposition of Patrick Pilkington, August 20, 2007, 50:12-18; deposition of Benny McClure, August 15, 2007, 137: 9-16; and deposition of Leesa Butler, August 22, 2007, 22:17-19, 16:8-15, and 36:13-17. See also, Dan L. Cunningham, Guide for Prospective Contract Broiler Producers, University of Georgia College of Agriculture and Environmental Sciences, Bulletin 1167, Revised May 2008, p. 3.

<sup>6</sup> J. J. Molnar, T. Hoban and G. Brant, "Passing the Cluck, Dodging Pullets: Corporate Power, Environmental Responsibility, and the Contract Poultry Grower," Southern Rural Sociology, Vol. 18 (2), 2002, pp88-110.

<sup>7</sup> Vukina further discusses evolution of the poultry industry. See *supra* note 4. The lack of bargaining power is also discussed by Darryl E. Ray, "On Compensating Producers Who Contract Production," Article Number 233, Agricultural Policy Analysis Center, University of Tennessee, 2005.

<sup>8</sup> Although there is no open, transparent market for birds ready for processing, there are special deals allowing executives and insiders of some integrators to sell birds ready for processing to the integrator.

14. In April 2008 the Pew Commission published a comprehensive report on industrial farm animal production. This project was funded by a grant from The Pew Charitable Trusts to the Johns Hopkins Bloomberg School of Public Health to investigate the problems associated with industrial farm animal production, including poultry. This Commission succinctly described the poultry industry and waste problems, *"Most broiler chickens raised in the United States are produced under contract arrangements with integrated poultry producing companies. These companies typically control almost every aspect of production—they own the breeder flocks, hatcheries, chickens, feed mills, processing plants, and marketing agreements. Contract growers produce the chickens from hatchings to marketable size in broiler houses using equipment that meets the specifications of the integrator. The producer owns or leases the land and the facilities to raise the broilers, and the integrator owns the chickens and feed. Growers are also responsible for management of the litter as well as for the taxes, utilities, and insurance. The amount of litter produced annually for a broiler facility can be substantial; for example, a broiler farm that has four houses (each containing between 28,000 and 30,000 chickens) and that markets 4-pound broilers could generate approximately 340 tons of manure per year."*<sup>9</sup>

15. In the early history of the vertically integrated poultry industry, the integrators and growers were partners and tended to look out for each other's economic welfare. Vukina and Leegomonchai, state, *"Production contracts have played a decisive role in the broiler industry's remarkable growth but the integrator-grower relations have gradually worsened. Starting in the mid 1990s the tensions have received increasing attention nationwide."*<sup>10</sup> The industry has evolved to the point that growers are completely at the mercy of their integrator. In economics, this is referred to as monopsony, or "buyer" or "contractor" power held by the integrator over their growers.

16. New growers are not permitted to negotiate contract terms with integrators; the only option given by an integrator to a grower is to accept or reject the contract.<sup>11</sup> Vukina and Leegomonchai, state, *"Modern broiler contracts are written by the integrator and offered to prospective growers on a take-it-or-leave-it basis."*<sup>12</sup> Moreover, the integrator solely determines when a new contract is adopted and all terms of that contract. Because of the long economic life of highly specialized poultry growout facilities, the business options facing an existing grower are often (a) bankruptcy, or (b) acceptance of whatever contract changes are dictated by the

<sup>9</sup> Putting Meat on the Table: Industrial Farm Animal Production in America, a Report of the Pew Commission on Industrial Farm Animal Production, The Pew Charitable Trusts and Johns Hopkins Bloomberg School of Public Health, April 29, 2008, p. 42.

<sup>10</sup> Tomislav Vukina and Poramet Leegomonchai, "Political Economy of Regulation of Broiler Contracts," American Journal of Agricultural Economics 88, December 2006, 1258-1265.

<sup>11</sup> Patrick Pilkington testified at the preliminary injunction hearing in this case that Tyson contracts were non-negotiable. PI Transcript, March 3, 2008:1465:22-25. Deposition statements of representatives of defendant integrators also generally establish that growers are not permitted to negotiate contracts or contract changes. See, Leasea Butler, deposition of 8/22/2007 at 12:16 through 13:13; Benny McClure, deposition of 8/15/2007 at 132:24 through 133:10; Gary Murphy deposition of 7/30/2007 at 230: 6-12; Ray Wear deposition of 7/26/2007 at 56:14 through 57:14; and Patrick Pilkington deposition of 8/20/2007 at 20:6 through 21:12. A certified mail letter dated 1/31/1994 from Julian Wallace, Live Production Manager, Tyson Foods, Inc. to Mr. Norman Ranger, Idabel, OK, states, "Our available contract, as you well know, is non-negotiable ..."

<sup>12</sup> Tomislav Vukina and Poramet Leegomonchai, "Political Economy of Regulation of Broiler Contracts," American Journal of Agricultural Economics 88, December 2006, 1258-1265. Bold emphasis added.



integrator. Arms-length contract negotiations rarely if ever occur between grower and integrator; rather, contracts of adhesion characterize the industry.<sup>13</sup>

17. Lack of options for a grower is apparent from a 2004 national survey of growers reported by USDA/ERS in April 2008. This report states, *"Fifty-nine percent of growers with broiler production contracts responded that they had no marketing option other than their current integrator ... A quarter of contract broiler operations had only a single integrator in the area, while another 29 percent reported two integrators and 22 percent reported three. A given integrator may not be taking on new growers, and as a result it is quite possible for a grower to report that there are two or three companies in the area, but still report that he/she has no alternatives to his/her present contractor. ... Contract growers make significant long-term investments in housing. One of the striking features of production contracts is that, although growers and integrators typically have long-term relationships, contracts are usually written for short durations. ... Growers and integrators maintain long-term relationships with short-term contracts by renewing contracts annually. Contract renewal, however, often requires a significant new capital investment by growers."*<sup>14</sup> MacDonald and Korb, economists with ERS/USDA, state, *"Once the investment is made, growers face the risk of opportunistic behavior by integrators, who may have considerable monopsony power at that point. ... With a short-term contract, integrators may adjust payment schemes, or hold up growers for additional investments, as a condition of renewal."*<sup>15</sup> The 2008 Pew Commission report on Industrialized Farm Animal Production emphasizes the limited choices grower have, *"Once the commitment is made to such capital investment, many farmers have no choice but to continue to produce until the loan is paid off. Such contracts make access to open and competitive markets nearly impossible for most ... poultry producers, who must contract with integrators if they are to sell their product."*<sup>16</sup> These industry characteristics are manifestations of the control poultry integrators have over growers nationally and in the IRW. Even though there are several integrators in the IRW, defendant integrators maintain monopsony or oligopsony power over their contract growers, extending to waste and dead bird disposal.

18. A national survey of poultry producers conducted by Purdue University in 1999 for Farmers Legal Action Group (FLAG) with USDA funding reported that survey respondents had been growing broilers an average of 16 years.<sup>17</sup>

19. Poultry grow-out operations have a very long economic payout period, typically 20-30 years for a wood frame house and longer for a metal frame house.<sup>18</sup>

<sup>13</sup> My translation of the legal concept of a contract of adhesion is that it means there is a such an imbalance of economic power that the only viable option one side (in this case the grower) to the transaction has is to accept or reject what is offered by the other side (integrator).

<sup>14</sup> James MacDonald and Penni Korb, Agricultural Contracting Update, 2005, USDA, Economic Research Service, Economic Information Bulletin Number 35, April 2008. Bold emphasis added.

<sup>15</sup> *Ibid.*, pp 12-13.

<sup>16</sup> Putting Meat on the Table: Industrial Farm Animal Production in America, a Report of the Pew Commission on Industrial Farm Animal Production, The Pew Charitable Trusts and Johns Hopkins Bloomberg School of Public Health, April 29, 2008, p. 49.

<sup>17</sup> Farmers Legal Action Group, Assessing the Impact of Integrator Practices on Contract Poultry Growers, September 2001, p. 2.3.

<sup>18</sup> See, for example, Cunningham who states that poultry houses represent long-term investments of 30 years or more. Dan L. Cunningham, Cash Flow Estimates for Contract Broiler Production in Georgia: A 20-Year Analysis,

20. Broiler production is both capital and labor intensive.<sup>19</sup> Growers bring roughly one-half of the capital and much of the labor required to produce a processed whole bird.

21. Four to six houses generally constitute a full time job for one person. The average size of a grower's operation in the IRW is approximately 3 to 4 houses. Such an operation now costs between \$500,000 and \$1,000,000 to construct, depending on size and equipment. A 2006 Oklahoma State University broiler budget shows a single house and equipment costing \$255,000.<sup>20</sup>

22. Long-term profitability for growers has been declining. A 1992 Oklahoma State University (OSU) study reports a negative budgeted return (loss) of \$953 annually (on a \$100,000 investment) to risk, management, land, and overhead after subtracting a modest charge of \$4.50/hour for family labor.<sup>21</sup> A similar OSU budget published in 2006 reports shows a larger loss of \$4,260 annually (on a \$255,000 investment).<sup>22</sup> Translated from economic jargon, these OSU studies show that growers are getting a sub-competitive return for labor, and nothing for bearing substantial risks due to the integrators control of future pay, flock placements, and many other factors influencing profitability. In a sense, poultry contracts cash flow (i.e. put money in the growers pockets), but the contract pay has not generally been sufficient for growers to earn a competitive return in recent years.

23. Shofner reports a 1999 survey of Arkansas poultry growers conducted by the University of Arkansas on behalf of the Arkansas Farm Bureau Association (AFBA). She reports that the survey revealed " ... 67% (of respondents) stated that they are not getting a fair return on their investment." Shofner also states, "As it becomes apparent that income from the poultry operations is not sufficient, many producers are finding it necessary to have off-farm income just to make ends meet. Over 47% of respondents of the AFBA survey revealed that their spouse had either part-time or full-time off-farm employment. There simply may not be adequate net income from the poultry operations only to support a household. This is particularly the case if substantial debt service on the operation exists." <sup>23</sup>

24. Although there is a long economic payout period of 20-30 years for poultry growout facilities, poultry contracts are typically for a much shorter time period. Defendants' contracts with growers have been generally for one year or less (See summary of defendant's contracts in Appendix B). A flock-to-flock contract has predominated in the IRW for the past two decades.

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University of Georgia College of Agriculture and Environmental Sciences, Cooperative Extension Service, Bulletin 1228, March 2003.

<sup>19</sup> Vukina notes, "The poultry industry is predominately organized in a manner that limits capital requirements by the integrator." *Supra* note 4.

<sup>20</sup> Damona Doye, Brian Freking and Joshua Payne, Broiler Productin: Considerations for Potential Growers, Oklahoma Cooperative Extension Fact Sheet, F-202, March 2006.

<sup>21</sup> Damona G. Doye, Joe G. Berry, Parman R. Green, and Patricia E. Norris, Broiler Production: Considerations for Potential Growers, Oklahoma Cooperative Extension Fact Sheet, F-202, November 1992.

<sup>22</sup> Damona Doye, Brian Freking and Joshua Payne, Broiler Productin: Considerations for Potential Growers, Oklahoma Cooperative Extension Fact Sheet, F-202, March 2006.

<sup>23</sup> Tara Shofner, "Development of the Interactive Broiler Income Spreadsheet," American Journal of Agricultural Economics 82 (Dec. 2000): 1240-1246.

Some recent contracts cover longer time periods, but there is no wording in these contracts that requires the defendant to provide more than one flock. For example, Tyson's 2005 contract covers three years (TSN107938SOK – TSN107939SOK), and Simmon's 2006 addendum covers seven years, but there is no wording in these contracts requiring either defendant to provide birds in a continuous, timely way necessary for the grower's economic survival over the stated multi-year time period.

25. A USDA survey of poultry growers in 2001 revealed that 35% of contracts were for less than three months, and only 16% of contracts were for longer than one year.<sup>24</sup> A USDA survey showed that the median length of broiler contracts was 12 months in 2004, which is consistent with the length of most contracts in the IRW.<sup>25</sup>

26. Integrators typically mandate specifications for poultry houses and equipment, and often require growers to make investments in upgrading equipment or facilities. A 2001 USDA national survey reveals that 84% of contract poultry growers were "... *required to make investments in equipment or facilities.*"<sup>26</sup> A USDA survey update revealed that 49% of broiler growers were required to make capital investments in 2004, and that this investment in the single year averaged \$49,037 per grower. Survey results imply that the average respondent had 3-4 standard size houses, so the average investment in the single year averaged \$10,000-15,000 per house for about one-half of the growers.

27. New growers typically borrow all funds for construction of houses and equipment, offering a small acreage of land as collateral. Mandated house and equipment upgrades can send growers back to the start of their debt challenge.<sup>27</sup> The on-going debt challenge often puts growers at the mercy of any changes in contract terms desired by the integrator. Growers rarely have any viable economic option other than accepting contract changes dictated by the integrator.

28. Farmers become contract growers only with approval of an integrator. Similarly, existing growers who wish to expand production by building additional houses do so only with the integrators express permission.

29. Once waste is removed from the poultry house it no longer has a role in the defendants' poultry production process.

30. Once a person becomes a grower, the integrator has almost total economic control and determines profitability or lack thereof of the average grow-out operation. Thus, the integrator effectively makes the decisions that determine whether growers have sufficient resources to properly manage and dispose of waste produced by the integrator's birds.

<sup>24</sup> <http://www.ers.usda.gov/Briefing/FarmStructure/Questions/livestock.htm>

<sup>25</sup> James MacDonald and Penni Korb, Agricultural Contracting Update, 2005, USDA, Economic Research Service, Economic Information Bulletin Number 35, April 2008.

<sup>26</sup> <http://www.ers.usda.gov/Briefing/FarmStructure/Questions/livestock.htm>

<sup>27</sup> Mark Jenner, Understanding the Lender's Share of Grower Contract Pay, American Farm Bureau Federation, January 3, 2002.

31. Integrators make the decisions about the location of grow-out facilities. Integrator control over location of production facilities is so complete that individuals desiring to become growers who are outside an area defined by an integrator—typically 25-50 miles—are simply not offered the option to become a grower.

32. An integrator's decisions about where to locate a complex and the size of the area in which growout facilities (and thus waste production) is typically based on its out-of-pocket expenses for hauling feed to growout facilities and birds to processing plants. The business model adopted by defendants ignores external (pollution and health) costs associated with poultry waste and thus results in waste generation and land application of waste being concentrated in relatively small geographical areas. Watershed pollution problems in the aggregate are therefore determined not by an individual farmer's growout operations, but by defendant's individual and collective decisions to concentrate poultry production and thus waste generation in relatively small geographic areas. As stated in a University of Arkansas Extension Bulletin, *"The real issue is not the P concentration in runoff from the edge of any one field, but the total P load that is transported to the stream or lake from an entire watershed."*<sup>28</sup>

33. In my opinion integrators, including defendants, have used their economic control over growers to attempt to shift environmental costs and health risk costs from themselves to growers. Molnar, et al, summarize this attempted risk shifting, *"Broiler production is concentrated in a few southern states where farmers are highly dependent on contract arrangements for income and livelihood. ... Asymmetrical power relationships shift waste management responsibilities to growers in a number of ways. This paper details maneuvers poultry integrators use to avoid environmental risk and transfer it to their contract growers. Corporations 'pass the cluck' when they shift responsibility for achieving regulatory compliance to the farmer who then must seek technical and financial assistance from public agencies. Poultry integrators 'dodge pullets' when they retain ownership of live animals, but dead birds become the farmer's property and disposal problem."*<sup>29</sup>

34. A Pew Commission report, published in 2008, notes the integrators shifting of risks and external costs to growers, *"Under the modern-day contracts between integrators and growers, the latter are usually responsible for disposition of the animal waste and the carcasses of animals that die before shipment to the processor. The costs of pollution and waste management are also the grower's responsibility. ... Because the integrators are few in number and control much if not all of the market, the grower often has little market power and may not be able to demand a price high enough to cover the costs of waste disposal and environmental degradation. These environmental costs are thereby 'externalized' to the general society and are not captured in the costs of production nor reflected in the retail price of the product."*<sup>30</sup> The 2008 report on CAFOs by the Union of Concerned Scientists discusses at length the external costs of excess

<sup>28</sup> Mike Daniels, Tommy Daniel and Karl VanDevender, Soil Phosphorus Levels: Concerns and Recommendations, University of Arkansas Division of Agriculture, Cooperative Extension Service, Bulletin FSA1029-500-3-04R, 1999 and 2004

<sup>29</sup> J. J. Molnar, T. Hoban and G. Brant, "Passing the Cluck, Dodging Pullets: Corporate Power, Environmental Responsibility, and the Contract Poultry Grower," Southern Rural Sociology, Vol. 18 (2), 2002, pp88-110.

<sup>30</sup> Putting Meat on the Table: Industrial Farm Animal Production in America, a Report of the Pew Commission on Industrial Farm Animal Production, The Pew Charitable Trusts and Johns Hopkins Bloomberg School of Public Health, April 29, 2008, p. 6.



manure being borne by society rather than integrators.<sup>31</sup> Defendants' shifting of environmental risks to growers and society at large is evident in the IRW.

35. Poultry contracts in the IRW generally show an increasing effort by defendants' to explicitly shift to contract growers the environmental costs and health risk costs associated with poultry waste generated from defendant's birds, feed, and medicine.

36. Early grower contracts made no mention of used litter and waste disposal responsibilities. However, since the early 1990s, defendants' contracts typically state that the grower is responsible for meeting all applicable state, federal, and local environmental laws and regulations. Examples of the evolution of defendant's contracts with specific reference to used litter and waste follow.

- a. Defendant Cargill's turkey contract in 1981 did not mention responsibility for, or disposal of, used litter and waste, except for the grower's responsibility to dispose of dead birds (CARTP133037 – CARTP133047). Cargill's 1990 contract, however, stated, "*Grower agrees to comply with all applicable state, county, local and federal health laws.*" (CARTP135792 – CARTP135796). Cargill's 1993 contract expanded wording in the 1990 contract to state "*Grower agrees to comply with all applicable state, local, and federal laws and requirements, including but not limited to health and environmental regulations.*"<sup>32</sup> (CARTP002257 – CARTP002260). Cargill's 2005 contract also required the grower to have an approved Nutrient Management Plan that complied with all applicable federal, state, and local laws and regulations and complied with best management and agronomic practices in the region (CARTP007134 – CARTP007141).
- b. Defendant Tyson's 1986 broiler contract did not specifically mention disposal of used litter and waste, or responsibility for disposal of dead birds (TSN54063SOK – TSN54064SOK). However, Tyson's broiler contract for 1999 states "*The Producer shall be responsible for the removal of all dead birds and litter and shall dispose of dead birds and litter in accordance with the law applicable to this location.*" (TSN54238SOK – TSN54239SOK). Tyson's 2006 broiler contract is more specific, "*Producer will comply with all applicable federal, state, and local statutes, rules, regulations, and ordinances in performance of this Contract, including but not limited to all those governing environmental and poultry litter management.*" (TSN107938SOK – TSN107939SOK).
- c. Defendant George's' 1987 pullet growing contract did not mention responsibility for disposal or ownership of used litter and waste (GE312 – GE315), while their 1993 contract states that the grower will "*Dispose of litter in accordance with Best Management Practices, a copy of which has been provided,*"<sup>33</sup> and to work

<sup>31</sup> Doug Gurian-Sherman, CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations, Union of Concerned Scientists, April 2008. Chapter 3, in particular, discusses the externalized costs of CAFOs.

<sup>32</sup> Bold emphasis added.

<sup>33</sup> Such a copy was not attached to the 1993 contract I reviewed.

*with Soil Conservation Service in developing a Nutrient Management Plan for his farm, and to follow all regulations pertaining to litter disposal.*" (GE241 – GE246). George's 1997 pullet growing contract has the same wording about litter disposal as the 1993 contract (GE817 – GE822), but has an attachment that gives detailed guidelines for poultry waste management. This attachment (GE823) states that it was *"compiled by Cooperative Committee for Poultry Farm Litter and Waste Disposal, comprised of members of the Arkansas Poultry Federation, Soil Conservation Service, Arkansas Department of Pollution Control and Ecology, Arkansas Extension Service, and Arkansas Soil & Water Conservation Service."* George's broiler contracts show a similar evolution of assignment of responsibility for used litter and waste to the grower.

- d. Defendant Simmons' broiler contracts for 1979 and 1986 make no mention of responsibility for disposal or ownership of used litter and waste (SIM AG 13722 – SIM AG 13724, SIM AG 30790 – SIM AG 30793). However, their 1995 broiler contract states that the grower agrees *"To follow the Federal Insecticide, Fungicide and Rodenticide Act, as well as appropriate FDA, USDA, and EPA regulations."* (SIM AG 12633 – SIM AG 12635). The 1997 contract added the requirement that the grower *"dispose of litter in accordance with Best Management Practices as detailed by the nutrient management plan for Grower's farm developed with appropriate governmental agencies, and to follow all applicable regulations pertaining to litter disposal."* (SIM AG 12388).
- e. Defendant Peterson's 2004 broiler contract, like recent Simmons' contracts, states that the Grower agrees, *"To follow Federal Insecticide, Fungicide and Rodenticide Act of 1947, as well as appropriate FDA, USDA, State, and EPA regulations."* (PFIRWP-000835 – PFIRWP-000844). The contract also requires the grower to have and follow a litter management plan, and to provide Peterson with a copy of that plan. Unlike contracts used by other defendant's, the 1999 Peterson contract states, *"All poultry waste produced by the birds covered by this contract shall be the exclusive property of the Contract Farmer and the Contract Farmer shall be responsible for and receive all of the economic benefits from the use and disposal of said waste."* (PFIRWP-0747060 – PFIRWP-0747062) Peterson's 2004 broiler contract has essentially the same wording, *"... the litter shall be the exclusive property of the contract grower and contract grower shall be responsible for and receive all of the economic benefits from the use and disposal of said litter."* (PFIRWP-000838). Peterson's 2005 broiler contract (PFIRWP-000819 – PFIRWP-000829) states that the litter is the exclusive property of the grower, but then goes on to specify exactly how the grower is to dispose of litter and waste he/she presumably owns. Waste disposal practices in Peterson's contract (PFIRWP-000826) are those developed by the Cooperative Committee for Poultry Farm Litter and Waste Disposal, which are also included in Georges recent contracts (e.g. GE823).
- f. Defendant Peterson's 1997 Breeder Hen contract makes no mention of responsibility for waste generated by defendant's birds, although it does require

the grower to dispose of all dead birds. Defendant Peterson's 2004 Pullet contract requires a litter management plan as required by Peterson Farms or federal, state or local law. Unlike contracts used by other defendants, this Peterson contract states, "*all poultry waste produced by the birds covered by this Agreement shall be the exclusive property of the contract farmer and the contract farmer shall be responsible for and receive all of the economic benefits from the use and disposal of said waste.*" (PFIRWE0012498 – PFIRWE0012503)

- g. The 2003 Cal-Maine Breeder Pullet Brooding and Rearing Agreement does not explicitly mention responsibility for used litter and waste, although it states that the grower must "... *comply with all applicable sta[t]e, local, and federal health laws. In the event that grower shall fail to comply with an[y] provision of the applicable laws, then owner is hereby granted and shall have the right to enter upon the grower's premises and correct and perform such necessary acts so as to comply with said laws or regulations and the expenses incurred thereto shall be charged to the grower.*" (CM-001366 – CM-001368).
- h. A 1991 Cal-Maine Egg Production Agreement states that the grower agrees "*To provide all clean up, according to Owner's specifications; and to comply with accepted practices of waste and dead bird disposal. ... To comply with all applicable state, county, local and federal laws; in the event that grower shall fail to comply with any provision of the applicable laws, then owner is hereby granted and shall have the right to enter upon the grower's premises ... and correct and perform such necessary acts so as to comply with said laws or regulations and the expenses incurred thereto shall be charged to the Producer.*" (CM-000000338 -- CM-000000343). In contrast, a 1992 Cal-Maine Egg Production Agreement states that "*Producer agrees to be responsible for the proper clean up of Producer's facilities in accordance with generally accepted poultry husbandry practices and to comply with all applicable laws and regulations, including, but not limited to, rules and regulations promulgated by the Environmental Protection Agency and the agency of Producer's state responsible for disposal of waste and emissions, relative to the disposal of any and all waste products produced from Producer's facilities including, but not limited to, waste water run-off, manure and dead birds.*" (CM-000000332 – CM-000000333).
- i. Cobb-Vantress Breeder Hen contract for 2001 requires the grower "*To clean litter from houses upon completion of bird cycle.*" This contract also states "*The Producer agrees to provide poultry disposal equipment and to dispose of all dead birds according to the company's specifications and as required by federal, state and local laws.*" Although this contract requires the grower to provide "poultry" disposal equipment, it does not specifically mention responsibility for disposal of waste. (TSN60299SOK -- TSN60302SOK ) In contrast, the 2003 Cobb-Vantress Breeder Hen contract states "*The Producer shall be responsible for removing all dead birds and litter and shall dispose of such in accordance with the Company's specifications and applicable laws. ... The Producer agrees to remove all litter and debris from the poultry houses as soon as possible after the completion of the*

*bird cycle.*" (TSN60289SOK -- TSN60294SOK) The 2005 Cobb-Vantress Breeder Hen contract adds to the wording in the 2003 contract that *"The Producer agrees to comply with all applicable federal, state, and local statutes, rules, regulations, and ordinances in performance of this contract, including but not limited to all those governing environmental and poultry litter management."* (TSN60277SOK -- TSN60281SOK)

- j. Appendix B of my report provides an abbreviated summary of features of defendant's contracts that I have reviewed.

37. Defendant Peterson Farms shifting of costs to growers of disposing of waste from their birds is evidenced by defendant Peterson's 2003 letter to a grower in the ESW stating *"Beginning October 27, 2003 Peterson Farms will not place chicks on any farm that does not have litter properly stored including de-cake. If producer is unable to remove litter from the premises then Peterson Farms can arrange, at your request, the transport of the litter outside the watershed and will charge the producer for the actual transportation cost. The transportation cost will be taken out of the producer's next settlement check."*<sup>34</sup>


38. Due to the long economic payback period for poultry production facilities, existing growers often have no option but to accept contract additions, including those pertaining to litter and waste.

39. Complete control over growers' contract terms, and disposition of litter and waste by defendants' Tyson Foods, Cobb-Vantress, Peterson Farms, Simmons Foods, Cargill, and George's is manifested in the defendant's settlement in the City of Tulsa litigation over the ESW.<sup>35</sup>

40. In summary, defendants' fully control who will be a grower, who will be responsible for disposal of waste and dead birds, and all contract terms. Defendants' also fully determine the location of poultry waste generation in the IRW, as well as how much waste is generated in the IRW.

I declare, under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on the 4<sup>th</sup> day of June, 2009.

  
C. Robert Taylor, Ph.D.

<sup>34</sup> Letter from Richard Payne, Peterson Farms Broiler Manager, to Contract Growers in the Eucha/Spavinaw Watershed, dated October 10, 2003. Bates document KAK-000296

<sup>35</sup> Order Approving Settlement Agreement, Vacating Order of March 14, 2003, and Administratively Closing Case, United States District Court for the Northern District of Oklahoma, Case No. 01 CV 0900EA, July 16, 2003.